

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-1329

DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND
APPELLANT

V.

MICHAEL C. KNAULS;
HALLIBURTON ENERGY SERVICES;
PACIFIC ENERGY SERVICES
APPELLEES

Opinion Delivered APRIL 15, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F112770]

REVERSED and REMANDED

ROBERT J. GLADWIN, Judge

Appellant Death & Permanent Total Disability Trust Fund (Fund) appeals the decision of the Workers' Compensation Commission (Commission) filed September 16, 2008. The Commission, overturning the April 28, 2008 decision of the administrative law judge (ALJ), found that the Fund should pay the underpaid amount of \$25,252.57 in permanent and total-disability benefits to appellee Michael C. Knauls for the period beginning October 25, 2002. On appeal, the Fund contends that the Commission erred as to the law and facts when it assigned liability to the Fund for the underpayment and gap in permanent-total-disability benefits. We reverse and remand to the Commission for further findings and conclusions.

On November 1, 2001, Knauls sustained a devastating injury while working for employer Halliburton Energy Services when steel pipes fell on top of him, leaving him a

complete paraplegic. Halliburton accepted the claim as compensable. Knauls was found to be at maximum-medical improvement on October 25, 2002, and the parties agreed that he sustained a seventy-five percent whole-body impairment. Halliburton then began making benefit payments. On November 9, 2007, Halliburton's attorney sent a letter to the Fund stating that they had received a claim for permanent and total-disability benefits pertaining to Mr. Michael Knauls. The parties stipulated that the Fund accepted Knauls as permanently and totally disabled on December 18, 2007.

The Fund, upon accepting Knauls as permanently and totally disabled, reviewed the payments made by Halliburton since the end of Knauls's healing period in October of 2002 and found that Halliburton would have paid out \$75,000 in permanent-disability benefits as of December 14, 2007. The Fund argued that under Workers' Compensation Rule 28 they were allowed ninety days to investigate the viability of Knauls's claim for permanent and total-disability benefits. Based upon the investigative period, the Fund contended they would not be starting permanent and total-disability-benefit payments until February 13, 2008. Therefore, since Halliburton's limit of \$75,000 was to have been paid on December 14, 2007, and the Fund would not pick up permanent and total-disability benefits until February 13, 2008, the issue of Halliburton's or the Fund's liability for permanent-disability benefits for the period of December 14, 2007, through February 12, 2008, arose.

Additionally, Knauls argued that, since Halliburton and the Fund both now stipulate to his being permanently and totally disabled, he was underpaid \$25,252.57, the difference between partial and total-disability benefits. Knauls came up with the figure of \$25,252.57

based upon the argument that Halliburton had been paying the seventy-five percent anatomical rating at the rate of \$308.00 per week but should have been paying him the total-disability rate of \$410.00 per week since he reached maximum-medical improvement in October of 2002. Knauls sought the \$25,252.57 in the alleged underpayment from either Halliburton or the Fund.

The ALJ found that Knauls failed to prove Halliburton or the Fund were responsible for permanent-total-disability benefits for the period of December 14, 2007, through February 12, 2008. Also, the ALJ found that Knauls failed to prove that either Halliburton or the Fund were responsible for underpayment of permanent-total-disability benefits in the amount of \$25,252.57. The Full Commission reversed the ALJ's opinion, finding the Fund liable for the underpayment of permanent-total-disability benefits in the amount of \$25,252.57. The Commission's opinion states:

The Fund argues, pursuant to Commission Rule 28, that it should not be liable for permanent benefits until the expiration of ninety (90) days pursuant to the Rule. We again note, however, that [the Fund] accepted liability for permanent and total disability benefits on December 18, 2007. The ninety-day period described in Commission Rule 28, whichever version of the Rule is applied, does not trump [the Fund's] statutory responsibility once the Fund agreed it was liable for permanent benefits. Although [the Fund] did not accept liability until December 18, 2007, the record in the present matter demonstrates that the claimant was permanently and totally disabled beginning October 25, 2002.

Based on our de novo review of the entire record, the Full Commission reverses the administrative law judge's finding that the claimant did not prove he was entitled to permanent total disability benefits in the amount of \$25,252.57. The Full Commission finds that Respondent No. 2, the Death and Permanent Total Disability Trust Fund, is liable for the underpayment of permanent total disability benefits in the amount of \$25,252.57. The Full Commission directs Respondent No. 2, the Fund, to reimburse the claimant for the \$25,252.57 underpayment of permanent total disability benefits

to which the claimant is entitled. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code Ann. § 11-9-715 (Repl. 2002).

The Fund filed a timely notice of appeal, and this appeal followed.

When reviewing a decision from the Workers' Compensation Commission, the appellate court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirms that decision if it is supported by substantial evidence. *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. *See id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.*

The Commission is a fact-finding body, not an appellate court. *See Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001). The Commission is charged with the duty to make and enter findings of fact and rulings of law. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003). The Commission's findings must contain all of the specific facts relevant to the contested issue or issues so that the reviewing court may determine whether the Commission has resolved these issues in conformity with the law. *Hill, supra.* When the Commission fails to make specific findings on an issue, it is appropriate that the case be reversed and remanded for the Commission to make such findings. *Squires, supra; Wright v. American Transp.*, 18 Ark. App. 18, 709 S.W.2d 107 (1986).

The Commission failed to clearly conclude who should be responsible for the gap in payments to Knauls. In its opinion, the Commission states, “[t]he ninety-day period described in Commission Rule 28, whichever version of the Rule is applied, does not trump [the Fund’s] statutory responsibility once the Fund agreed it was liable for permanent benefits.” It appears that the Commission intended for the Fund to bear the liability, but failed to address the issue beyond this statement. The Fund argues that the Commission erred in awarding liability for the \$25,252.57 underpayment of permanent-total-disability benefits to the Fund. However, the Commission failed to state its findings that supported this holding, but simply concluded that “[the Fund] is liable for the underpayment of permanent total disability benefits in the amount of \$25,252.57.”

We hold that the Commission erred in not rendering a conclusion of law on who is responsible for the payment of the gap in payments and in failing to make findings in support of its conclusion regarding the underpayment. We cannot perform appellate review until the issue raised and litigated is answered by the Commission. *See, e.g., Michael v. Keep & Teach, Inc.*, 87 Ark. App. 48, 185 S.W.3d 158 (2004). Accordingly, we reverse and remand to the Commission for further findings and conclusions.

Reversed and remanded.

PITTMAN and HENRY, JJ., agree.